



COMMONWEALTH of VIRGINIA

Matthew J. Strickler
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY
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David K. Paylor
Director

Robert J. Weld
Regional Director

**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
UNITED STATES ARMY, RFAAP
AND
UNITED STATES ARMY CORPS OF ENGINEERS, HUNTSVILLE
ENGINEERING AND SUPPORT CENTER
AND
NORTHSTAR CONTRACTING GROUP, INC.
FOR
FACILITIES REDUCTION PROGRAM BUILDING DEMOLITION AT
RADFORD ARMY AMMUNITION PLANT**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and the United States Army, the United States Army Corps of Engineers, and NorthStar Contracting Group, Inc. for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.
2. "Army" means the United States Army. The Army is a "person" within the meaning of Va. Code § 10.1-1300.

3. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
4. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
5. "Buildings" means the Buildings 4904, 7102-1, 7102-2, and 3641 at RFAAP.
6. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
7. "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled, as defined by 40 CFR § 260.10.
8. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
9. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
10. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
11. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
13. "NorthStar" means NorthStar Contracting Group, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. NorthStar is a "person" within the meaning of Va. Code § 10.1-1300.
14. "Order" means this document, also known as a Consent Order.
15. "The Parties" means the United States Army, the United States Army Corps of Engineers, Huntsville Engineering and Support Center, and NorthStar Contracting Group, LP.
16. "RC Demolition" means RC Demolition LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. RC Demolition is a "person" within the meaning of Va. Code § 10.1-1300.
17. "RFAAP" means the Radford Army Ammunition Plant, located at State Route 114 in Montgomery and Pulaski Counties, Virginia.

18. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
19. "Storage" means the holding of solid or hazardous waste for a temporary period, at the end of which the waste is treated, disposed of, or stored elsewhere, as defined by 40 CFR § 260.10 and 9 VAC 20-81-10, as applicable.
20. "TCLP" means the Toxicity Characteristic Leaching Procedure, test Method 1311 in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846, as incorporated by reference at 40 CFR § 260.11.
21. "USACE" means the United States Army Corps of Engineers, Huntsville Engineering and Support Center. The USACE is a "person" within the meaning of Va. Code § 10.1-1300.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effective date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
25. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. The Army owns RFAAP. The Buildings were located at RFAAP. Operations at the RFAAP are subject to the Virginia Waste Management Act, the VHWMR, and the VSWMR.
2. RFAAP is registered as a large quantity generator of hazardous waste. The Army was issued EPA ID No. VA1210020730 for RFAAP.
3. The Buildings were demolished in 2016 and 2017 under an ongoing Facilities Reduction Program ("FRP"). The FRP is administered by the USACE. Lead abatement and demolition work in 2016 and 2017 was performed by the contractor NorthStar, which

was under contract with the USACE for that work. NorthStar's subcontractor for this work was RC Demolition, LLC, a limited liability company authorized to do business in Virginia.

4. The Buildings were sampled by NorthStar in July 2016 and samples were analyzed by TCLP. TCLP results indicated that the material contained lead at levels exceeding the regulatory threshold defined in the VSWMR for lead. The material was therefore a characteristic hazardous waste as defined by the VSWMR. Waste generated by this abatement work included lead-painted wood, drywall tape, and joint material intermixed with asbestos-containing material. The total weight of this co-mingled waste was 82.35 tons. NorthStar did not characterize the waste after it was co-mingled.
5. In January 2017, NorthStar shipped the 82.35 tons of waste described in Paragraph 4 above to the First Piedmont Corporation ("FPC") Industrial Landfill ("FPC Landfill") for disposal. The waste was not described as a hazardous waste in shipping papers submitted by NorthStar to FPC. FPC disposed of the waste in a cell in the FPC Landfill that was authorized only for disposal of asbestos-containing waste. The FPC Landfill is permitted under Virginia DEQ Solid Waste Permit No. 065 only for the disposal of solid waste and is not authorized to accept hazardous waste.
6. In an email dated October 10, 2018, a representative of NorthStar stated that "all four buildings that exceeded the [regulatory] threshold limit of 5PPM [(for lead)] . . . were buildings demolished by RC Demolition. The debris from these buildings were sent to the landfill by RC Demolition."
7. In August 2017, a third-party audit of the TCLP results for the July 2016 samples from the demolished buildings was conducted. The auditor discovered that the regulatory limit for lead had been exceeded (and was thus a hazardous waste) and contacted North Star.
8. On August 16, 2017, First Piedmont Corporation ("FPC") informed DEQ that FPC had been notified by NorthStar that NorthStar had shipped demolition waste containing lead at levels exceeding the regulatory level as determined by TCLP for a characteristic hazardous waste for disposal at the FPC Industrial Landfill ("Landfill") in January 2017.
9. Prior to disposing of the demolition debris at the FPC Landfill, the Army and the USACE did not make notification to the FPC Landfill representatives that the demolition debris did not meet treatment standards or that the demolition required additional treatment prior to land disposal.
10. 40 CFR § 268.7(a)(1) requires that generators of hazardous waste determine if the waste has to be treated before it can be land disposed.
11. 40 CFR § 268.7(a)(2) requires that if the hazardous waste does not meet the treatment standards, or if the generator chooses not to make the determination of whether the waste must be treated, with the initial shipment of waste to each treatment or storage facility, the

generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file.

12. 40 CFR §262.10(a)(3) states that a generator shall not transport, offer its hazardous waste for transport, or otherwise cause its hazardous waste to be sent to a facility that is not a designated facility, as defined in 40 CFR § 260.10, or not otherwise authorized to receive the generator's hazardous waste.
13. On August 30, 2017, DEQ, Army and USACE representatives discussed the management of the demolition debris in a conference call. During the conference call, Army and USACE representatives stated that the concrete from the lower sections of the above-referenced buildings had been staged in temporary stockpiles at RFAAP. Specifically, since February or March, 2017, the concrete had been staged in discrete piles or windrows for each of the structures in question. The Army and USACE did not make a hazardous waste determination for the concrete contained in the stockpiles that remained on site.
14. 40 CFR § 262.11 requires that a person who generates a solid waste, as defined in 40 CFR § 261.2, determine if that waste is a hazardous waste.
15. On November 6, 2017, the Army submitted a report that summarized the results of composite samples that were collected from 1) the concrete stockpiles and 2) soils in the area of the stockpiles. Based on the results, the Army and the USACE determined the remaining concrete is non-hazardous.
16. On December 21, 2017, DEQ issued NOV No. 17-12-BRRO-001 to the Army and the USACE. On July 13, 2018, DEQ issued a revised NOV No. 17-12-BRRO-001 to the Army, the USACE and NorthStar. Collectively, these NOVs describe the violations in Paragraphs C(3) through C(14) above.
17. On February 12, March 5, and March 15, 2018, the USACE submitted written responses to the NOV.
18. On March 15, 2018, DEQ staff had a conference call with representatives of the Army and the USACE to discuss the NOV.
19. On March 19, 2018, the Army submitted a written response to the NOV.
20. On October 10, 2018, NorthStar submitted a written response to the NOV.
21. Based on the results of documentation submitted by FPC, the Army, the USACE, and NorthStar, the Board concludes that the Army, the USACE and NorthStar have violated 40 CFR § 262.11, 40 CFR § 262.10(a)(3), 40 CFR § 268.7(a)(1), and 40 CFR § 268.7(a)(2), as described in paragraphs C(3) through C(14), above.

22. The Parties have submitted documentation that verifies that the violations described in Paragraphs C(3) through C(14) above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders NorthStar, and NorthStar agrees to pay a civil charge of \$76,086.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

NorthStar shall include its Federal Employer Identification Number (FEIN) (13-3879343) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, NorthStar shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Parties for good cause shown by the Parties, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, The Parties admit the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. NorthStar consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. The Parties declare that they have received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and they waive the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the Parties to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Parties shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The Parties shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. The Parties shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which The Parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and the Parties.

11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after the Parties have completed all of the requirements of the Order;
- b. The Parties petition the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the Parties.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Parties from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the Parties and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representatives of the Parties certify that he or she are responsible officials authorized to enter into the terms and conditions of this Order and to execute and legally bind the Parties to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Parties.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By their signatures below, the Parties voluntarily agree to the issuance of this Order.

16. Nothing herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341. Any requirement for payment or obligation of funds by a particular date established by the terms of this agreement shall be subject to the availability of funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds

Consent Order

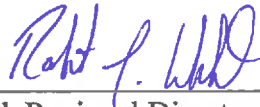
United States Army, RFAAP and USACE, Huntsville; NorthStar Contracting Group, Inc.

EPA ID Nos. VA1210020730; BR17-1222

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shall be appropriately adjusted. If sufficient appropriations are not available and cannot be obtained, the Army will promptly inform the DEQ Regional Director.

And it is so ORDERED this 4th day of January, 2019.



Robert J. Weld, Regional Director
Department of Environmental Quality

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The United States Army Corps of Engineers, Huntsville Engineering and Support Center
voluntarily agrees to the issuance of this Order.

Date: 20 Nov 2018 By: [Signature] Program Manager
(Person) (Title)

State/Commonwealth of Alabama

City/County of Madison

The foregoing document was signed and acknowledged before me this 28th day of

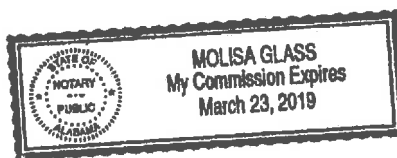
November 2018, by Michelle L. Clark

[Signature]
Notary Public

Registration No.

My commission expires: March 23, 2019

Notary seal:



Consent Order

United States Army, RFAAP and USACE, Huntsville; NorthStar Contracting Group, Inc.

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The NorthStar Contracting Group, Inc. voluntarily agrees to the issuance of this Order.

Date: 10-25-18 By: Gary Thibodeaux VP, Director H&S
(Person) (Title)

State/Commonwealth of Texas

City/County of Orange

The foregoing document was signed and acknowledged before me this 25th day of

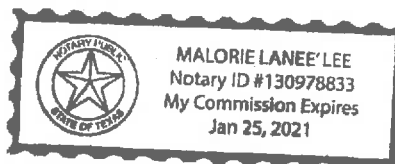
October, 2018, by Gary Thibodeaux

Malorie Lane Lee
Notary Public

130978833
Registration No.

My commission expires: Jan. 25, 2021

Notary seal:



The United States Army, RFAAP voluntarily agrees to the issuance of this Order.

Date: 25 Oct 18 By: JAMES H. SCOTT III, LTC, COMMANDING
(Person) (Title)

State/Commonwealth of Virginia
City/County of Montgomery

The foregoing document was signed and acknowledged before me this 25th day of

October, 2018 by James H. Scott III

Rhonda L. Presley
Notary Public

7641532

Registration No.

My commission expires: 10.31.2019

Notary seal:

